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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Request of)
)
CELLULAR TELECOMMUNICATIONS)
INDUSTRY ASSOCIATION)
)
For Declaratory Ruling and)
Amendment of the Commission's)
Policies and Rules Pertaining to)
the Regulation of Cellular Carriers)

RM-8179

To: The Commission

COMMENTS OF CENTURY CELLUNET, INC.

Century Cellunet, Inc. ("Century") hereby submits its comments on the above-captioned Request for Declaratory Ruling and Petition for Rulemaking ("Request") filed by the Cellular Telecommunications Industry Association ("CTIA") on January 19, 1993.¹ As detailed below, Century fully supports CTIA's request for a declaratory ruling that cellular carriers are exempt from tariff filing requirements for services governed by Section 221(b) of the Communications Act² and to the extent that they are "connecting carriers." Century further supports the designation of cellular carriers as non-dominant and the adoption of minimal tariffing requirements for these carriers.

¹ The Request appeared on Public Notice, Report No. 1927 (Feb. 17, 1993).

² 47 U.S.C. § 221(b).








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I. INTRODUCTION AND SUMMARY

On November 13, 1992, the U.S. Court of Appeals for the District of Columbia Circuit in AT&T v. FCC vacated the Commission's policy of exempting non-dominant common carriers

Communications Act. CTIA also seeks clarification that the "connecting carrier" exception to the federal tariff filing requirement in Section 203(a) applies to cellular carriers engaged in interstate communication exclusively through interconnection with the facilities of an unaffiliated interexchange carrier. Finally, it requests that the Commission declare cellular carriers non-dominant and simplify the tariff filing requirements with which they must



II. TARIFFING WOULD BE COUNTERPRODUCTIVE IN THE COMPETITIVE CELLULAR MARKETPLACE

The cellular marketplace is characterized by extensive competition. Indeed, the two cellular licensees in each market currently compete actively with each other in terms of price, quality and scope of service. Resellers of cellular service provide added competition. Providers of related types of two-way communications, such as Specialized Mobile Radio ("SMR") and Enhanced Specialized Mobile Radio ("ESMR") licensees, also are increasingly offering services that are interchangeable with cellular. The impending introduction of personal communications services ("PCSs") will provide even more vigorous competition.

In such an environment, imposing tariffing requirements on cellular carriers would not only be unnecessary, but could have serious adverse effects on the marketplace. The delays inherent in the tariff process, as well as the limitations of fixed service plans, are likely to hamper cellular carriers' ability to respond quickly and creatively to customer needs. In addition, the disclosure of each carrier's pricing schedule -- and its underlying costs if deemed dominant -- is likely to undermine competition, thereby depriving the public of the most reasonable rates.

Imposing tariffing requirements on cellular carriers would also substantially disadvantage them in the marketplace

vis-a-vis their non-tariffed competitors. Neither SMR nor ESMR providers are currently subject to tariffing requirements. Moreover, one of the regulatory schemes considered for PCS would also remove it from the scope of federal tariff jurisdiction. Under the burden of costly tariff regulation, cellular carriers would not be able to compete effectively, thereby depriving the public of the benefits of full and fair competition. Given these likely adverse impacts, imposing federal tariffing requirements on cellular carriers is not only unnecessary, but counterproductive.

III. CELLULAR SERVICE IS INHERENTLY AND PREDOMINANTLY A LOCAL SERVICE EXEMPT FROM FEDERAL TARIFFING OBLIGATIONS

CTIA properly characterizes cellular as predominantly a local service. Indeed, the cellular service was designed around the concept of local service areas. As CTIA correctly recognizes,

the overwhelming percentage of cellular calls are completed within the MSA or RSA of origination and are therefore jurisdictionally intrastate, and the vast majority of interstate traffic that is originated or terminated on cellular systems is transmitted over the facilities of interexchange carriers.⁵

This relatively minimal presence in the interstate market, especially in comparison to its major participants,

⁵ CTIA Request at 7.

illustrates that tariffing requirements for cellular carriers
are unnecessary.

cellular markets, even if the resulting integrated system covers more than one state. In both of these cases, the service provided remains predominantly local in nature and thus should not be subject to federal tariffing requirements.

Century also agrees with CTIA that, pursuant to Section 203(a) of the Communications Act,⁷ cellular carriers that act as "connecting carriers" should be exempt from federal tariffing requirements. A connecting carrier is defined as

any carrier engaged in interstate or foreign communications solely through physical connection with the facilities of another carrier not directly or indirectly controlling, controlled by, or under direct or indirect common control with such carrier.⁸

However, Century submits that the "connecting carrier" exception should be interpreted more broadly than in the wireline context. Specifically, mere "indirect" connection with an affiliated interexchange carrier should not prevent a cellular licensee from being classified as a connecting carrier. The language of the provision supports such an interpretation as it focuses only on "physical," not indirect, connections with other carriers.

Moreover, as CTIA properly recognizes, the connecting carrier exemption was created to ensure that smaller companies that pose no monopolistic threat are subject to

⁷ 47 U.S.C. § 203(a).

⁸ 47 U.S.C. §§ 152(b)(2), 153(u).

only minimal federal regulation.⁹ Given their limited amount of interstate traffic, cellular carriers clearly pose no threat to interstate competition. Accordingly, the Commission should define the scope of this exception expansively as applied to cellular carriers.¹⁰

IV. ANY FEDERALLY TARIFFABLE CELLULAR SERVICES SHOULD BE CLASSIFIED AS NON-DOMINANT AND SUBJECT TO MAXIMUM STREAMLINING

To date, the Commission has not had occasion to address the status of cellular carriers in the context of federal tariff obligations.¹¹ Century agrees with CTIA that cellular licensees should be designated as non-dominant for this purpose so they can take advantage of streamlined tariff filing requirements and procedures applicable to other non-dominant carriers.

As noted above, the cellular market is demonstrably competitive. Further, cellular licensees provide a predominantly local service, with interstate communications constituting only a small fraction of the traffic carried.

⁹ CTIA Request at 11.

¹⁰ Century supports CTIA's conclusion that cellular roaming services are not subject to federal tariffing requirements. Many roaming services are essentially billing and collection functions that are not a common carrier offerings.

¹¹ As such, prior FCC statements regarding the dominance of cellular carriers are the agency equivalent of dicta.

Commission precedent illustrates that non-dominant treatment has been accorded to carriers in comparable circumstances.¹² As CTIA notes, "[i]t makes little sense to confer non-dominant status on an interexchange carrier the size of MCI, yet retain the dominant classification for cellular carriers which are engaged in interstate services to an extremely limited extent by comparison."¹³

Yet, regardless of the status conferred on cellular carriers, Century urges the Commission to minimize the tariffing obligations of these licensees to the maximum extent consistent with the Act. Streamlined tariffing requirements for cellular carriers are necessary to maintain competitive balance in the wireless marketplace and to ensure the most responsive service to the public. Specifically, Century supports rule changes to allow cellular carriers to file only copies of their rate schedules for applicable interstate services, without burdensome supporting

¹² Local Multipoint Distribution Service, FCC 92-538 (released Jan. 8, 1993) at ¶ 27 (Notice of Proposed Rulemaking); Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, 2 FCC Rcd 485, 490 (1987) (Second Report and Order), aff'd 2 FCC Rcd 6830 (1987), further recon. denied, 4 FCC Rcd 6016 (1989), vacated in part, ARINC v. FCC, 928 F.2d 428 (D.C. Cir. 1991), tentative decision on remand, 6 FCC Rcd 4900 (1991), final decision on remand, 7 FCC Rcd 266 (1992).

¹³ CTIA Request at 20.


information. Cellular carriers should also be permitted to specify "banded rates" that set forth minimum and maximum rate levels.

Additionally, the Commission should eliminate the notice period for cellular tariffs, allowing such tariffs to become

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 1993, I caused copies of the foregoing "Comments of Century Cellunet, Inc." to be mailed via first-class postage prepaid mail to the following:

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